



CITY OF  
**PORTLAND, OREGON**  
OFFICE OF THE CITY AUDITOR  
Hearings Office

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**HEARINGS OFFICER'S ORDER**

TriMet vs. Waylon Anthony Welch

CASE NO. 3100079  
(TriMet Exclusion Number 199708)

HEARING DATE: March 11, 2010

APPEARANCES:

Mr. Waylon Welch, Excluded Party

Supervisor Myles Vaylon, for TriMet

HEARINGS OFFICER: Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Timelines: The Hearings Officer finds the following concerning the Notice of Exclusion being issued:

TriMet issued the Notice of Exclusion to Mr. Waylon Anthony Welch on February 19, 2010. The case was forwarded to the City of Portland Hearings Office on February 24, 2010. The Hearings Office mailed a hearing notice to the parties on March 1, 2010, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Welch's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Welch when he was excluded. The notice did reference the violating conduct/applicable code provision.

Stays: The exclusion was subject to an automatic stay upon being issued.

Mitigating and/or Aggravating Factors: The Hearings Officer finds actions and attitude towards TriMet employees, on February 19, 2010, placed one or more TriMet employees in fear of possible physical harm. The Hearings Officer finds that such actions and attitude could be considered a threat to the safety of TriMet customers and employees.

Probability that the excluded individual engaged in the conduct supporting the exclusion: Mr. Welch appeared at the hearing and testified on his own behalf. Field Operations Supervisor Vaylon appeared at the hearing and testified on behalf of TriMet. The Hearings Officer makes this decision based upon the testimony of Mr. Welch and Supervisor Vaylon and the documents admitted into the evidentiary record (Exhibits 1 through and including 8).

Mr. Welch testified that on February 19, 2010, he was on his way to work when he ran to get on a Max train. Mr. Welch stated that he typically uses an Honored Citizen ticket and has, in his possession, an Honored Citizen qualification card. Mr. Welch stated that on February 19, 2010, his qualification card, unknown to him at the time, had expired. Mr. Welch stated that when he arrived at the stop to get off of the Max train, he observed 8 persons who appeared to be "cops" and that freaked him out. Mr. Welch stated he was approached by a person who asked him for identification and he refused because the person was not a "cop." Mr. Welch stated that he was in a hurry to get to work and felt harassed by the "cops" and the "guns." Mr. Welch stated that he felt Supervisor Vaylon wasted 5 minutes of his time. Mr. Welch said that when a Beaverton Police Officer asked him for his identification he gave it to the Police Officer.

Supervisor Vaylon testified that while at the Sunset Transit Station on February 19, 2010, he and other TriMet personnel and Transit Police Officers were conducting a fare mission; checking whether persons riding trains had valid fares. Supervisor Vaylon stated that he observed Mr. Welch get of a Max train. Supervisor Vaylon stated he contacted Mr. Welch and asked him to show proof of purchase of a valid fare and was shown an Honored Citizen ticket. Supervisor Vaylon stated that he then asked Mr. Welch for identification for the purpose of verifying Mr. Welch's qualifications to purchase an Honored Citizen ticket. Supervisor Vaylon stated that Mr. Welch refused. Supervisor Vaylon testified that Mr. Welch began to yell at him, told him that he was impersonating a police officer and forced Supervisor Vaylon to be concerned for his safety. Supervisor Vaylon stated that he moved back away from Mr. Welch to maintain what he believed a safe distance from Mr. Welch. Supervisor Vaylon stated that it took two police officers and two TriMet employees to complete the processing of the Notice of Exclusion given to Mr. Welch. Supervisor Vaylon stated that he was wearing the same jacket he was wearing at the hearing which includes a TriMet patch. Supervisor Vaylon stated that no police officer had a gun drawn from their holster.

Mr. Welch received a Notice of Exclusion on February 19, 2010 for allegedly violating TMC 28.15 D (Harassment/Intimidation). A person violates TMC 28.15 D (Harassment/Intimidation) if the person is on TriMet property and engages in violent, threatening or disruptive behavior or conduct that places another person in reasonable fear of imminent physical harm.

The Hearings Officer finds that the testimony of Mr. Welch that he was contacted by Supervisor Vaylon and refused to show his identification to Supervisor Vaylon to be credible testimony. The Hearings Officer finds that the testimony of Supervisor Vaylon is completely credible. The Hearings Officer finds that Mr. Welch, on February 19, 2010, was contacted by Supervisor Vaylon, and that Mr. Welch refused to show his identification because Supervisor Vaylon was not a "cop." The Hearings Officer finds the testimony of Supervisor Vaylon credible; that Mr. Welch yelled at Supervisor Vaylon and moved aggressively towards Supervisor Vaylon. The Hearings Officer finds the testimony of Supervisor Vaylon that Mr. Welch's actions, on February 19, 2010, made him fearful for his physical safety and as a result moved back away from Mr. Welch to maintain a safe distance. The Hearings Officer finds that Mr. Welch's words and actions, together, on February 19, 2010, did place Supervisor Vaylon in reasonable fear of imminent physical harm. The Hearings Officer finds it more probable than not that Mr. Welch, on February 19, 2010, did violate TMC 28.15 D (Harassment/Intimidation). The Hearings Officer finds the Notice of Exclusion issued to Mr. Waylon Anthony Welch on February 19, 2010 is valid.

Special Exceptions: The Hearings Officer finds Mr. Welch is transit dependent. Mr. Welch stated he needs access to bus lines #20, #63, #58 and #44 and all Max Lines to travel to/from his residence and shopping and work. Mr. Welch stated his work schedule is variable. The Hearings Officer finds that Mr. Welch should have a Qualified Exclusion to meet his needs. The Hearings Officer finds that Mr. Welch needs access to bus lines #20, #63, #58 and #44 and all Max Lines all days of the week from 7:00 a.m. to 12 Midnight. The Hearings Officer advised Mr. Welch that the Hearings Officer can deny issuance of a Qualified Exclusion if the person engaged in violent, seriously disruptive, or criminal conduct, or engaged in conduct that creates a threat to the safety of others or the operation of the transit system. The Hearings Officer advised Mr. Welch that if, during the term of this

exclusion he receives another Notice of Exclusion related to conduct that creates a risk to the safety of passengers and/or TriMet employees or agents, the Hearings Officer will deny any request by Mr. Welch for a Qualified Exclusion. Mr. Welch was advised to conduct himself, while on TriMet property and/or vehicles in a civil and lawful manner.

**ORDER AND DETERMINATION:**

1. Validity of the Notice of Exclusion:

The Hearings Officer modifies the Notice of Exclusion issued to Mr. Waylon Anthony Welch on February 19, 2010.

2. Length of the Exclusion:

The exclusion shall become effective with this Order, on March 17, 2010, and shall conclude on June 13, 2010 at 5:00 p.m.

3. Scope of the Exclusion:

Mr. Welch shall have access to bus lines #20, #63, #58 and #44 and all Max Lines all days of the week from 7:00 a.m. to 12 Midnight.

4. This order has been mailed to the parties on March 12, 2010, not more than five (5) business days following the hearing, and will become final on March 17, 2010.

5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: March 12, 2010

  
Gregory J. Frank, Hearings Officer

GJF:gj/rs

Enclosure

<u>Exhibit #</u>	<u>Description</u>	<u>Submitted by</u>	<u>Disposition</u>
1	Appeal Form page 2	Turner, Anna	Received
2	TriMet Fare Inspection System print out	Turner, Anna	Received
3	Notice of Exclusion	Turner, Anna	Received
4	Issuing Person's Affidavit	Turner, Anna	Received
5	Additional address for appellant	Turner, Anna	Received
6	Mailing list	Hearings Office	Received
7	Hearing notice	Hearings Office	Received
8	Statement of Rights	Hearings Office	Received